

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NORTH DAKOTA

In re:) Case No. 23-30352
DRAIN SERVICES INC.,) (Chapter 11 – Subchapter V)
Debtor.)

)

**ORDER GRANTING DEBTOR'S MOTION FOR LEAVE TO USE CASH
COLLATERAL ON INTERIM BASIS**

Debtor Drain Services Inc. filed a Motion for Leave to Use Cash Collateral. Doc. 8. Choice Financial Group filed an objection. On October 6, 2023, the Court held a preliminary hearing on the motion. A final hearing was scheduled for October 17, 2023, but, at the request of Debtor and by agreement of the parties, that hearing was treated as a second preliminary hearing. Based on the motion, exhibits and other evidence received during the October 6, 2023, and October 17, 2023, hearings, the Court finds that use of a limited sum of cash collateral during the interim period is necessary to avoid immediate and irreparable harm. More specifically, the relief provided in this Order is necessary to maintain Debtor's operations during the interim period. Accordingly, for the reasons stated on the record,

IT IS ORDERED

1. The Motion is GRANTED on an interim basis.

2. Consistent with the weekly budget proposed at the second interim hearing,

Debtor is authorized to use not more than \$60,000.00 in cash collateral between October 17, 2023, and October 31, 2023.

3. As adequate protection for Debtor's use of cash collateral, the Court finds that equity in Debtor's property serves as adequate protection for the limited use of cash

collateral. Additionally, Debtor agreed to grant Choice Financial Group, the United States Small Business Administration and the Internal Revenue Service replacement liens on cash generated by Debtor during the course of its Chapter 11 case up to the full sum of the cash collateral Debtor uses. Accordingly, to the extent Debtor uses prepetition cash collateral in which Choice Financial Group, the United States Small Business Administration and/or the Internal Revenue Service hold a security interest, Debtor is authorized to grant these creditors replacement liens, pursuant to 11 U.S.C. § 552, in Debtor's post-petition cash of the same priority, dignity, and effect as the prepetition liens on the prepetition property; provided such replacement liens will not attach to avoidance actions or other actions under Chapter 5 of the Bankruptcy Code or any proceeds or recoveries from them. The liens and security interests granted shall be effective and perfected without further act by any party.

4. In addition to, and not in lieu of, the adequate protection provided for in the paragraph above, Debtor agreed to pay to Choice Financial Group (i) the sum of \$25,000.00, by the close of business on Friday, October 20, 2023; and (ii) the sum of \$10,000.00 on or before the 15th day of each successive calendar month until a plan of reorganization is confirmed; these payments will not count against the cash collateral limit noted above.

5. Every Friday, Debtor's proposed counsel (or counsel, if a pending employment application be granted) must send to counsel for (i) Choice Financial Group; (ii) the United States of America; (iii) the United States Trustee; and (iv) the Subchapter V Trustee, a digital print out of Debtor's bank activity for the subject week. Upon the request of any such counsel, Debtor must also provide such backup documentation as it

may have for any given transaction. Should the Debtor lack backup documentation for any transaction of a material nature, counsel for any of the parties listed above may ask Debtor to file a motion under Federal Rule of Bankruptcy Procedure 2004, to procure such documentation, and Debtor must file the motion, issue any resulting subpoena permitted by court order, and make good faith efforts to obtain such backup documentation.

The final hearing on this matter will be held on October 31, 2023, at 1:00 p.m. The deadline to object to final relief is October 27, 2023.

Dated: October 23, 2023.



SHON HASTINGS, JUDGE
UNITED STATES BANKRUPTCY COURT